08-11153-scc Doc 973 Filed 07/21/10 Entered 07/21/10 10:16:51 Main Document Pg 1 of 14 Hearing Date and Time: TBD Response Deadline: TBD

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Richard P. Krasnow Adam P. Strochak

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11 Case No.

.

LEXINGTON PRECISION CORP., et al., : 08-11153 (SCC)

:

Debtors. : (Jointly Administered)

:

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DEBTORS' OBJECTION TO PROOF OF CLAIM FILED BY WACKER CHEMICAL CORP. (CLAIM NO. 246)

TO THE HONORABLE SHELLEY C. CHAPMAN, UNITED STATES BANKRUPTCY JUDGE:

Lexington Precision Corporation ("Lexington"), and its wholly-owned subsidiary, Lexington Rubber Group, Inc., each as debtors and debtors-in-possession (together, the "Debtors"), submit this objection (the "Objection") to Proof of Claim No. 246 (the "Wacker Claim"), filed by Wacker Chemical Corp. ("Wacker") against Lexington Rubber Group, Inc., and a proposed order attached hereto as Exhibit B, and in support of the objection respectfully represent as follows:

Background

1. On April 1, 2008 (the "<u>Commencement Date</u>"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States

Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

- 2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").
- 3. On April 11, 2008, the United States Trustee for the Southern District of New York (the "<u>U.S. Trustee</u>"), appointed the statutory committee of creditors (the "<u>Creditors'</u> <u>Committee</u>").
- 4. Pursuant to an order of the Court, dated, April 2, 2008, the Debtors retained Epiq Bankruptcy Solutions, LLC ("Epiq"), as the Debtors' claims agent.
- 5. On June 13, 2008, the Debtors filed their schedules and statements of financial affairs (collectively, the "**Schedules**") [Docket Nos. 174, 176].
- 6. By order, dated June 30, 2008, the Court established August 15, 2008 at 5:00 p.m. (prevailing Eastern Time) as the deadline for each person or entity other than a Government Unit (as defined by section 101(27) of the Bankruptcy Code), that asserts a claim (as defined by section 101(5) of the Bankruptcy Code) against any of the Debtors that arose prior to April 1, 1008 to file a proof of claim.

Jurisdiction

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Wacker Claim

8. On or about August 13, 2008, Wacker filed the Wacker Claim, a copy of which is attached hereto as **Exhibit A**. The Wacker Claim seeks payment from Lexington Rubber Group, Inc. for "goods sold" in the aggregate amount of \$610,753.78. Wacker is a supplier of materials used in the production of rubber parts.

Objection to the Wacker Claim

- 9. The Debtors do not dispute that they purchased goods from Wacker and that the amount of the Wacker Claim remains unpaid, but object to the Wacker Claim because any liability to Wacker is subject to setoff in whole or in part due to the counterclaim for damages set forth below.
- 10. Section 502(b)(1) of the Bankruptcy Code provides that a claim shall not be allowed if it is "unenforceable" against the debtor in accordance with applicable law. 11 U.S.C. § 502(b)(1). The Debtors have valid counterclaims for which they have the right of setoff under statute or common law. The Debtors' right to set off mutual obligations renders the Wacker Claim unenforceable under section 502(b)(1).

Counterclaim Against Wacker

- 11. The Debtors assert this counterclaim for damages and assert the right to setoff damages owed to the estate as a defense to the Wacker Claim.
- 12. Lexington Rubber Group, Inc. ("<u>LRGI</u>") purchased a silicone product called Elastosil LR 3088/20 from Wacker. The Elastosil product was used as a raw material in the injection molding process in the Debtors' connector seals business.
- 13. In approximately mid-2006, without advising LRGI of the change,Wacker altered the composition of the Elastosil product. The change resulted in a higher

concentration of large magnesium oxide particles in the product. The presence of these large particles in higher-than-usual concentrations caused excessive wear to LRGI's injection molds, expensive devices critical to the manufacturing process and impossible to replace on short notice.

- 14. The Wacker Elastosil LR 3088/20 product supplied to LRGI was defective due to the presence of high concentrations of large magnesium oxide particles.
- 15. The Wacker Elastosil LR 3088/20 product supplied to LRGI was not fit for its intended purpose.
- 16. Wacker knew, or should have known, that it was shipping Elastosil product to the Debtors with an increased concentration of large magnesium oxide particles.
- 17. Wacker knew, or should have known, that an increased concentration of large magnesium oxide particles would cause damage to the Debtors' injection molds.
 - 18. Wacker failed to advise LRGI of the change in the Elastosil product.
- 19. It is the accepted custom and practice in the injection molding business for suppliers to notify manufacturers in advance of changes in the composition of raw materials because, among other reasons, injection molding is a high precision industry, end users have strict performance standards for rubber parts, and injection molds are sensitive to even minor variations in raw materials.
- 20. LRGI has been damaged by Wacker's delivery of materials that were defective and/or not fit for their intended purpose. As a result of the increased concentration of large magnesium oxide particles in the Elastosil LR 3088/20 product, LRGI suffered damages including, but not limited to:
 - a. Costs to re-tool mold parts that suffered excessive wear;
 - b. Lost business due to cancelled orders from a customer;
 - c. Increased scrap costs;

- d. Purchase price of defective or unfit materials;
- e. Employee labor costs to inspect for and repair damaged parts and to investigate and trace the cause of the problem; and
 - f. Permanent loss of good will with customers.
- 21. On account of its counterclaim, LRGI seeks damages from Wacker in an amount to be determined by the Court and set off, in whole or in part, from the Wacker Claim.

Reservation of Rights

22. The Debtors reserve their rights to amend this objection.

Notice

Debtors have provided notice of this Objection to (i) the U.S. Trustee, (ii) the attorneys for the agents for the Debtors' prepetition lenders, (iii) the attorneys for the Debtors' postpetition lenders, (iv) the attorneys for the Creditors' Committee, (v) counsel for the plan investor, (vi) the current holder of the Wacker Claim, and (vii) all other parties that have requested notice in these chapter 11 cases (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

WHEREFORE the Debtors respectfully request the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: July 20, 2010

New York, New York

/s/ Adam P. Strochak

Richard P. Krasnow Adam P. Strochak

WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000

Facsimile: (212) 310-8007

Attorneys for Debtors and Debtors in Possession

Exhibit A

Wacker Claim

United States Bankruptcy Court SOUTHERN DIS	STRICT OF NEW YORK PROOF OF CLAIM
Name of Debtor Lexington Rubber Group, Inc.	Case Number 08-11156
NOTE: This form should not be used to make a claim for an administrative e	expense arising after the commencement of the case. A
"request" for payment of an administrative expense may be filed pursuant to Name of Creditor (The person or other entity to whom the debto	
money or property):	anyone else has filed a proof of claim relating to your claim.
Wacker Chemical Corp.	Attach copy of statement giving particulars.
Name and address where notices should be sent:	☐ Check box if you have never
Attn: Sandy Lewis	received any notices from the bankruptcy court in this case.
3301 Sutton Road Adrian, MI 49221	Check box if the address differs
Telephone number: 517.264.8466	from the address on the envelope sent to you by the court.
Email: sandy.lewis@wacker.com	THIS SPACE IS FOR COURT USE ONLY
Last four digits of account or other number by which creditor debtor: 0396	identifies Check here replaces a previously filed claim, dated:4/28/08 X amends
1. Basis for Claim	
Goods sold	Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Services performed☐ Money loaned	Wages, salaries, and compensation (fill out below) Last four digits of SS#:
Personal injury/wrongful death	Unpaid compensation for services performed
☐ Taxes	from to
Other	(date) (date)
2. Date debt was incurred: Prior to April 1, 2008	3. If court judgment, date obtained: N/A
case filed. See reverse side for important explanations. Unsecured Nonpriority Claim \$610,753.78 Check this box if claim includes interest or other chanddition to the principal amount of the claim. Attach i statement of all interest or additional charges.	temized of setoff) Brief Description of Collateral: Real Estate Motor Vehicle Other
Unsecured Priority Claim	Value of Collateral: \$ Amount of arrearage and other charges at time case filed included in secured claim, if any:
☐ Check this box if you have an unsecured claim, all or part of which is priority.	\$
Amount entitled to priority \$	
Amount entitled to priority \$ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)	☐ Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).
☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) ☐ Wages, salaries, or commissions (up to \$10,000),* earned within 180 difiling of the bankruptcy petition or cessation of the debtor's business, wh	services for personal, family, or household use – 11 U.S.C. § 507(a)(7). ays before is Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).
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ATTACHMENT TO PROOF OF CLAIM OF WACKER CHEMICAL CROP. In Re: Lexington Rubber Group, Inc. Case No. 08-11156

The documents supporting this claim are voluminous and they were attached to Wacker's original Proof of Claim filed on April 28, 2008. An additional copy of the documents supporting this claim will be made available upon request.

Main Document

1000 Jackson Street Toledo, Ohio 43604-5573

419.241.9000 419.241.6894 fax

www.slk-law.com

DAVID J. COYLE 419.321.1418 dcoyle@slk-law.com

August 12, 2008

Via Federal Express **Overnight Mail**

Lexington Precision Claims Processing Center c/o Epiq Bankruptcy Solutions, LLC 757 Third Avenue, 3rd Floor New York, NY 10017

Re:

In Re: Lexington Rubber Group, Inc.

Case No. 08-11156

Proof of Claim Amount: \$610,753.78

Our File No. 032746

Dear Sir/Madam:

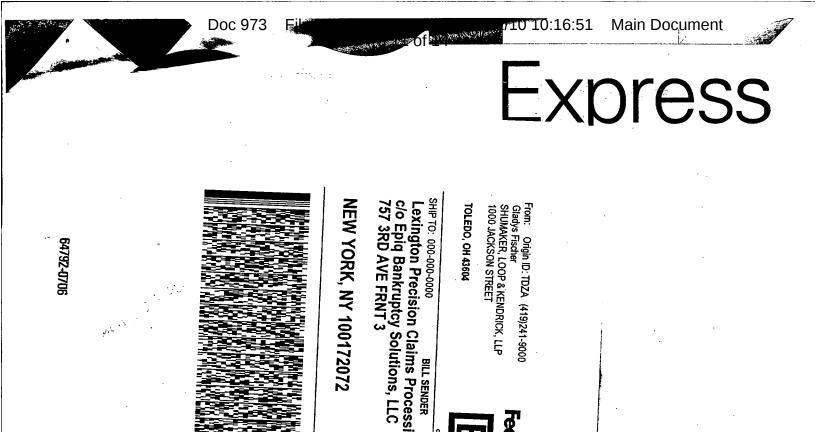
Enclosed please find the original and three (3) copies of a Proof of Claim to be filed on behalf of Wacker Chemical Corp. in the above-referenced matter. Please file the Proof of Claim and return file-stamped copies to the undersigned in the envelope provided.

If you have any questions, please contact me.

Very truly yours,

David J. Coyle

DJC/gaf **Enclosures**



BILL SENDER

Ref# (Invoice #

Ship Date: 12AUG08 ActWgt: 2 LB System#: 5317389/INET8061 Accoun#: S ************

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Exhibit B

Proposed Order

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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11 Case No.

LEXINGTON PRECISION CORP., et al., : 08-11153 (SCC)

00 11122 (800)

Debtors. : (Jointly Administered)

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ORDER GRANTING DEBTORS' OBJECTION TO PROOF OF CLAIM FILED BY WACKER CHEMICAL CORP. (CLAIM NO. 246)

Upon consideration of the objection, dated July 20, 2010 (the "Objection"). of Lexington Precision Corporation and its wholly-owned subsidiary, Lexington Rubber Group, Inc., each as debtors and debtors-in-possession (together, the "**Debtors**"), to Proof of Claim No. 246 (the "Claim"), filed by Wacker Chemical Corp.; and the Court having jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Objection; the Court hereby finds and determines that, pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, due and proper notice has been provided to the Notice Parties; and no other or further notice is necessary; and the relief requested in the Objection is in the best interests of the Debtors, their estates, and creditors; and the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and therefore it is

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

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ORDERED that the Claim is hereby disallowed in its entirety; and it is further ORDERED that Epiq is authorized and directed to delete the Claim from the official claims registry.

Dated: New York, New York

August ___, 2010

HONORABLE SHELLEY C. CHAPMAN UNITED STATES BANKRUPTCY JUDGE